

Introduced by Senator SherFebruary 23, 2001

An act to add Chapter 2.6 (commencing with Section 18900) to Division 8 of the Business and Professions Code, relating to athlete agents.

LEGISLATIVE COUNSEL'S DIGEST

SB 694, as introduced, Sher. Athlete agents.

The Miller-Ayala Athlete Agents Act regulates specified activities of an athlete agent in representing or seeking to represent student athletes and professional athletes. Under this act, an agent is required to file with the Secretary of State specified information about his or her background, training, and experience and to advise an athlete of the availability of this information. The act also requires the athlete agent to establish a trust fund and deposit into it all funds received on behalf of the athlete and, if providing financial services to the athlete, to disclose potential conflicts of interest, as specified. This act imposes additional requirements pertaining to an athlete agent's transactions with a student athlete, specifying the circumstances under which an athlete agent may contact a student athlete or his or her family, and requiring the athlete agent to include a disclosure in a contract with a student athlete, warning the student that he or she may lose eligibility to compete in interscholastic or intercollegiate sports upon entering into the contract and allowing the student athlete to rescind the contract within 15 days. The act allows for a civil action to recover damages resulting from its violation and makes void any contract that fails to comply with its requirements. The act also makes a violation of its provisions a misdemeanor offense.



This bill would enact the Uniform Athlete Agents Act to regulate the activities of an athlete agent in soliciting or contracting with a student athlete to represent him or her in negotiations for a professional sports or endorsement contract, as defined. The bill would prohibit, subject to specified exceptions, a person from acting as an athlete agent without a certificate of registration issued by the Secretary of State, and would void any contract negotiated in violation of this requirement. The bill would allow, as specified, for the acceptance of registration as an athlete agent with another state. The bill would require that a contract between the athlete agent and student athlete contain specified provisions, including the right of the student athlete to cancel the contract within 14 days of its execution and a warning that the student may lose his or her eligibility to compete as a student athlete. The bill would require both the agent and student to notify the educational institution in which the student is enrolled within 72 hours of entering into the contract and would provide for a civil action by the educational institution against an athlete agent or student athlete for damages resulting from a violation of the requirements pertaining to transactions between a student athlete and athlete agent. The bill would prohibit specified conduct by an athlete agent and would make the commission of that conduct by an athlete agent grounds for the Secretary of State to revoke or suspend the athlete agent's registration and to assess a civil penalty not to exceed \$25,000 against him or her. The bill would additionally make a violation of its provisions a misdemeanor offense. By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 2.6 (commencing with Section 18900)
2 is added to Division 8 of the Business and Professions Code, to
3 read:
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CHAPTER 2.6. UNIFORM ATHLETE AGENTS ACT

Article 1. General Provisions

18900. This chapter shall be known and may be cited as the Uniform Athlete Agents Act.

18901. The following definitions apply for the purposes of this chapter:

(a) “Agency contract” means an agreement in which a student athlete authorizes a person to negotiate or solicit on behalf of the student athlete a professional sports services contract or an endorsement contract.

(b) “Athlete agent” means an individual who enters into an agency contract with a student athlete or, directly or indirectly, recruits or solicits a student athlete to enter into an agency contract. The term includes an individual who represents to the public that the individual is an athlete agent. The term does not include a spouse, parent, sibling, grandparent, or guardian of the student athlete or an individual acting solely on behalf of a professional sports team or professional sports organization.

(c) “Athletic director” means an individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs for male students and female students, the athletic program for males or the athletic program for females, as appropriate.

(d) “Contact” means a communication, direct or indirect, between an athlete agent and a student athlete, to recruit or solicit the student athlete to enter into an agency contract.

(e) “Endorsement contract” means an agreement under which a student athlete is employed or receives consideration to use on behalf of the other party any value that the student athlete may have because of publicity, reputation, following, or fame obtained because of athletic ability or performance.

(f) “Intercollegiate sport” means a sport played at the collegiate level for which eligibility requirements for participation by a student athlete are established by a national association for the promotion or regulation of collegiate athletics.

(g) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association,

1 joint venture, government; governmental subdivision, agency, or
2 instrumentality; public corporation, or any other legal or
3 commercial entity.

4 (h) “Professional sports services contract” means an
5 agreement under which an individual is employed, or agrees to
6 render services, as a player on a professional sports team, with a
7 professional sports organization, or as a professional athlete.

8 (i) “Record” means information that is inscribed on a tangible
9 medium or that is stored in an electronic or other medium and is
10 retrievable in perceivable form.

11 (j) “Registration” means registration as an athlete agent
12 pursuant to this chapter.

13 (k) “State” means a State of the United States, the District of
14 Columbia, Puerto Rico, the United States Virgin Islands, or any
15 territory or insular possession subject to the jurisdiction of the
16 United States.

17 (l) “Student athlete” means an individual who engages in, is
18 eligible to engage in, or may be eligible in the future to engage in,
19 any intercollegiate sport. If an individual is permanently ineligible
20 to participate in a particular intercollegiate sport, the individual is
21 not a student athlete for purposes of that sport.

22 Article 2. Registration of Athlete Agents

23 18910. (a) Except as otherwise provided in subdivision (b),
24 an individual may not act as an athlete agent in this state without
25 holding a certificate of registration under Section 18912 or 18914.

26 (b) Before being issued a certificate of registration, an
27 individual may act as an athlete agent in this state for all purposes
28 except signing an agency contract, if a student athlete or another
29 person acting on behalf of the student athlete initiates
30 communication with the individual, and within seven days after an
31 initial act as an athlete agent, the individual submits an application
32 for registration as an athlete agent in this state.

33 (c) An agency contract resulting from conduct in violation of
34 this section is void, and the athlete agent shall return any
35 consideration received under the contract.

36 18911. (a) An applicant for registration shall submit an
37 application for registration to the Secretary of State in a form
38 prescribed by the Secretary of State. The application shall be in the
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1 name of an individual and, except as otherwise provided in
2 subdivision (b), signed or otherwise authenticated by the applicant
3 under penalty of perjury and state or contain the following
4 information:

5 (1) The name of the applicant and the address of the applicant's
6 principal place of business.

7 (2) The name of the applicant's business or employer, if
8 applicable.

9 (3) Any business or occupation engaged in by the applicant for
10 the five years next preceding the date of submission of the
11 application.

12 (4) A description of the applicant's formal training and
13 practical experience as an athlete agent and a description of the
14 applicant's educational background relating to his or her activities
15 as an athlete agent.

16 (5) The names and addresses of three individuals not related to
17 the applicant who are willing to serve as references.

18 (6) The name, sport, and last known team for each individual
19 for whom the applicant acted as an athlete agent during the five
20 years next preceding the date of submission of the application.

21 (7) If a corporation is employing the athlete agent, the names
22 and addresses of all persons who are officers or directors, and the
23 name and address of any shareholder of the corporation having an
24 interest of 5 percent or greater.

25 (8) If the athlete agent's business is other than a corporation, the
26 names and addresses of all persons who are the partners, members,
27 officers, managers, associates, or profit-sharers of the business.

28 (9) Whether the applicant or any person named pursuant to
29 paragraph (7) or (8) has been convicted of a crime that, if
30 committed in this state, would be a crime involving moral
31 turpitude or a felony, and identify the crime.

32 (10) Whether there has been any administrative or judicial
33 determination that the applicant or any person named pursuant to
34 paragraph (7) or (8) has made a false, misleading, deceptive, or
35 fraudulent representation.

36 (11) Any instance in which the conduct of the applicant or any
37 person named pursuant to paragraph (7) or (8) resulted in the
38 imposition of a sanction, suspension, or declaration of ineligibility
39 to participate in an interscholastic or intercollegiate athletic event
40 on a student athlete or educational institution.

(12) Any sanction, suspension, or disciplinary action taken against the applicant or any person named pursuant to paragraph (7) or (8) arising out of occupational or professional conduct.

(13) Whether there has been any denial of an application for, suspension or revocation of, or refusal to renew, the registration or licensure of the applicant or any person named pursuant to paragraph (7) or (8) as an athlete agent in any state.

(b) An individual who has submitted an application for, and holds a certificate of, registration or licensure as an athlete agent in another state, may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed pursuant to subdivision (a). The Secretary of State shall accept the application and the certificate from the other state as an application for registration in this state if the application to the other state meets the following criteria:

(1) It was submitted in the other state within six months next preceding the submission of the application in this state, and the applicant certifies that the information contained in the application is current.

(2) It contains information substantially similar to or more comprehensive than that required in an application submitted in this state.

(3) It was signed by the applicant under penalty of perjury.

18912. (a) Except as otherwise provided in subdivision (b), the Secretary of State shall issue a certificate of registration to an individual who complies with subdivision (a) of Section 18911 or whose application has been accepted under subdivision (b) of Section 18911.

(b) The Secretary of State may refuse to issue a certificate of registration if the Secretary of State determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the Secretary of State may consider whether the applicant has:

(1) Been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony.

(2) Made a materially false, misleading, deceptive, or fraudulent representation in the application or as an athlete agent.

(3) Engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity.

1 (4) Engaged in conduct prohibited by Section 18930.

2 (5) Had a registration or licensure as an athlete agent
3 suspended, revoked, or denied or been refused renewal of
4 registration or licensure as an athlete agent in any state.

5 (6) Engaged in conduct the consequence of which was that a
6 sanction, suspension, or declaration of ineligibility to participate
7 in an interscholastic or intercollegiate athletic event was imposed
8 on a student athlete or educational institution.

9 (7) Engaged in conduct that significantly adversely reflects on
10 the applicant's credibility, honesty, or integrity.

11 (c) In making a determination under subdivision (b), the
12 Secretary of State shall consider how recently the conduct
13 occurred, the nature of the conduct and the context in which it
14 occurred, and any other relevant conduct of the applicant.

15 (d) The term of a certificate of registration is two years from the
16 date of its issuance.

17 18913. (a) An athlete agent may apply to renew a registration
18 by submitting an application for renewal in a form prescribed by
19 the Secretary of State. The application for renewal shall be signed
20 by the applicant under penalty of perjury and contain current
21 information on all matters required in an original registration.

22 (b) An individual who has submitted an application for renewal
23 of registration or licensure in another state, in lieu of submitting
24 an application for renewal in the form prescribed pursuant to
25 subdivision (a), may file a copy of the application for renewal and
26 a valid certificate of registration or licensure from the other state.
27 The Secretary of State shall accept the application for renewal
28 from the other state as an application for renewal in this state if the
29 application to the other state if it meets the following criteria:

30 (1) It was submitted in the other state within six months next
31 preceding the filing in this state, and the applicant certifies the
32 information contained in the application for renewal is current.

33 (2) It contains information substantially similar to or more
34 comprehensive than that required in an application for renewal
35 submitted in this state.

36 (3) It was signed by the applicant under penalty of perjury.

37 (c) The term of the renewal of a certificate of registration is two
38 years from the date of its renewal.

1 18914. The Secretary of State may issue a temporary
2 certificate of registration while an application for registration or
3 renewal or registration is pending.

4 18915. An application for a certificate of registration and an
5 application for renewal of a certificate of registration are public
6 records for the purposes of the California Public Records Act
7 (Chapter 3.5 (commencing with Section 6250) of Division 7 of
8 Title 1 of the Government Code).

9 18916. (a) The Secretary of State may suspend, revoke, or
10 refuse to renew a registration for conduct that would have justified
11 denial of registration under subdivision (b) of Section 18912.

12 (b) The Secretary of State may deny, suspend, revoke, or refuse
13 to renew a certificate of registration or licensure only after proper
14 notice and an opportunity for a hearing. The proceedings under
15 this subdivision shall be conducted in accordance with Chapter 5
16 (commencing with Section 11500) of Part 1 of Division 3 of Title
17 2 of the Government Code.

18 19 Article 3. Agency Contracts 20

21 18920. (a) An agency contract shall be in a record, signed or
22 otherwise authenticated by the parties.

23 (b) An agency contract shall state or contain the following:

24 (1) The amount and method of calculating the consideration to
25 be paid by the student athlete for services to be provided by the
26 athlete agent under the contract and any other consideration the
27 athlete agent has received or will receive from any other source for
28 entering into the contract or for providing the services.

29 (2) The name of any person not listed in the application for
30 registration or renewal of registration who will be compensated
31 because the student athlete signed the agency contract.

32 (3) A description of any expenses that the student athlete agrees
33 to reimburse.

34 (4) A description of the services to be provided to the student
35 athlete.

36 (5) The duration of the contract.

37 (6) The date of execution.

38 (c) An agency contract shall contain, in close proximity to the
39 signature of the student athlete, a conspicuous notice in boldface
40 type in capital letters stating the following:

1 “WARNING TO STUDENT ATHLETE IF YOU SIGN THIS
2 CONTRACT:
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4 (1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE
5 AS A STUDENT ATHLETE IN YOUR SPORT.

6 (2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72
7 HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH
8 YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR
9 ATHLETIC DIRECTOR.

10 (3) YOU MAY CANCEL THIS CONTRACT WITHIN 14
11 DAYS AFTER SIGNING IT. CANCELLATION OF THIS
12 CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.”

13 (d) An agency contract that does not conform to this section is
14 voidable by the student athlete. If a student athlete voids an agency
15 contract, the student athlete is not required to pay any
16 consideration under the contract or to return any consideration
17 received from the athlete agent to induce the student athlete to
18 enter into the contract.

19 (e) The athlete agent shall give a record of the signed or
20 otherwise authenticated agency contract to the student athlete at
21 the time of execution.

22 18921. (a) Within 72 hours after entering into an agency
23 contract or before the next scheduled athletic event in which the
24 student athlete may participate, whichever occurs first, the athlete
25 agent shall give notice in a record of the existence of the contract
26 to the athletic director of the educational institution at which the
27 student athlete is enrolled or the athlete agent has reasonable
28 grounds to believe the student athlete intends to enroll.

29 (b) Within 72 hours after entering into an agency contract or
30 before the next athletic event in which the student athlete may
31 participate, whichever occurs first, the student athlete shall inform
32 the athletic director of the educational institution at which the
33 student athlete is enrolled that he or she has entered into an agency
34 contract.

35 18922. (a) A student athlete may cancel an agency contract
36 by giving notice of the cancellation to the athlete agent in a record
37 within 14 days after the contract is signed.

38 (b) A student athlete may not waive the right to cancel an
39 agency contract.

(c) If a student athlete cancels an agency contract, the student athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student athlete to enter into the contract.

Article 4. Offenses and Enforcement

18930. (a) An athlete agent, with the intent to induce a student athlete to enter into an agency contract, may not engage in any of the following conduct:

(1) Give any materially false or misleading information or make a materially false promise or representation.

(2) Furnish anything of value to a student athlete before the student athlete enters into the agency contract.

(3) Furnish anything of value to any individual other than the student athlete or another registered athlete agent.

(b) An athlete agent may not intentionally engage in any of the following conduct:

(1) Initiate contact with a student athlete unless registered under this chapter.

(2) Refuse or fail to retain or permit inspection of the records required to be retained by Section 18950.

(3) Fail to register when required by Section 18910.

(4) Provide materially false or misleading information in an application for registration or renewal of registration.

(5) Predate or postdate an agency contract.

(6) Fail to notify a student athlete before the student athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student athlete ineligible to participate as a student athlete in that sport.

18931. An athlete agent who violates Section 18930 is guilty of a misdemeanor.

18932. (a) An educational institution has a right of action against an athlete agent or a former student athlete for damages caused by a violation of this chapter. In an action under this section, the court may award to the prevailing party costs and reasonable attorney's fees.

(b) Damages of an educational institution under subdivision (a) include losses and expenses incurred because, as a result of the conduct of an athlete agent or former student athlete, the

educational institution was injured by a violation of this chapter or was penalized, disqualified, or suspended from participation in athletics by a national association for the promotion and regulation of athletics, by an athletic conference, or by reasonable self-imposed disciplinary action taken to mitigate sanctions likely to be imposed by such an organization.

(c) A right of action under this section does not accrue until the educational institution discovers or by the exercise of reasonable diligence would have discovered the violation by the athlete agent or former student athlete.

(d) Any liability of the athlete agent or the former student athlete under this section is several and not joint.

(e) This chapter does not restrict rights, remedies, or defenses of any person under law or equity.

18933. The Secretary of State may assess a civil penalty against an athlete agent not to exceed twenty-five thousand dollars (\$25,000) for a violation of this chapter. The provisions of paragraphs (1), (2), (4), and (5) of subdivision (b) of Section 125.9 apply to the assessment of a civil penalty made under this section.

Article 5. Revenue

18940. An application for registration or renewal of registration shall be accompanied by a fee in the following amount:

(a) _____ dollars (\$_____) for an initial application for registration.

(b) _____ dollars (\$_____) for an application for registration based upon a certificate of registration or licensure issued by another state.

(c) _____ dollars (\$_____) for an application for renewal of registration.

(d) _____ dollars (\$_____) for an application for renewal of registration based upon an application for renewal of registration or licensure submitted in another state.

18941. All fees collected pursuant to Section 18940 and all civil penalties collected pursuant to Section 18933 shall be deposited into the _____ Fund, which is hereby created.

Article 6. Miscellaneous

18950. (a) An athlete agent shall retain the following records for a period of five years:

(1) The name and address of each individual represented by the athlete agent.

(2) Any agency contract entered into by the athlete agent.

(3) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student athlete to enter into an agency contract.

(b) Records required by subdivision (a) to be retained are open to inspection by the Secretary of State during normal business hours.

18951. By acting as an athlete agent in this state, a nonresident individual appoints the Secretary of State as the individual's agent for service of process in any civil action in this state related to the individual's acting as an athlete agent in this state.

18952. The Secretary of State may issue subpoenas for any material that is relevant to the administration of this chapter.

18953. The provisions of this chapter governing the legal effect, validity, or enforceability of electronic records or signatures, and of contracts formed or performed with the use of those records or signatures conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. Sec. 7001 et seq.) and supersede, modify, and limit the Electronic Signatures in Global and National Commerce Act.

18954. The provisions of this chapter are taken from the Uniform Athletes Act of 2000, drafted by the National Conference of Commissioners on Uniform State Laws. In applying and construing the provisions of this chapter, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

18955. The provisions of this chapter are severable. If any provision of this chapter or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school

1 district will be incurred because this act creates a new crime or
2 infraction, eliminates a crime or infraction, or changes the penalty
3 for a crime or infraction, within the meaning of Section 17556 of
4 the Government Code, or changes the definition of a crime within
5 the meaning of Section 6 of Article XIII B of the California
6 Constitution.

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